

THE DRAIN CODE OF 1956 (EXCERPT)
Act 40 of 1956

CHAPTER 7.

APPORTIONMENT AND REVIEW.

280.151 Final order of determination; filing; contracts for sections or whole; apportionment of costs, benefits; review, appeal.

Sec. 151. Upon the release of the right of way and damages, or upon the determination and return of the special commissioners, the commissioner shall make his final order of determination establishing the drain, which drain shall be divided into convenient sections for the letting of contracts: Provided, That the commissioner may let the drain in sections or as a whole. Said order of determination shall be filed with the county drain commissioner within 5 days after such order is made. He shall, before the day of letting and review, fix the number of installments for the collection of drainage taxes and apportion the per cent of the cost of construction of such drain which any township, city or village traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway under the control of such township, city or village. He shall apportion the per cent of the cost of construction of such drain which any highway then under the control of the county or district road commissioners, shall be liable to pay by reason of benefits therefor, and as the means of improving such highway. He shall also apportion the per cent of the cost of construction of such drain which any state trunk line highway, under the control of the state highway commissioner, shall be liable to pay by reason of benefits therefor and as the means of improving said highway. He shall also apportion the per cent of benefits to accrue to any piece or parcel of land by reason of the construction of such drain over and above the per cent apportioned to any township, city or village at large or to any highway as above provided. Such per cent so apportioned when finally approved shall be assessed against such townships, cities and villages and against the county at large by reason of the improvement of the highways within the drainage district, and against the state by reason of the improvement of the state trunk line highways within such drainage district, and against all parcels of land therein according to such apportionment of benefits as herein provided. The apportionment of benefits so made shall be subject to review and correction and may be appealed from as in this act provided. The board of supervisors at its October meeting each year shall make provision by proper assessment of the amounts apportioned against any highway under the control of the county and district highway commissioners.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.152 Apportionment of benefits; description of lands.

Sec. 152. All apportionments of benefits under the provisions of this act shall be upon the principle of benefits derived. All descriptions of land under the provisions of this act shall be made by giving the legal subdivision thereof, whenever practicable, and when the tract of land which is to be benefited or affected by such drain is less than such legal subdivision it may be described by designation of the lot or other boundaries, or in some way by which it may be known.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.153 Order to contain description of special assessment district; designation.

Sec. 153. Such order of determination shall contain a description of the district to be assessed for benefits in the construction of said drain, either by boundaries or by description of the several tracts or parcels of land to be assessed, which said tracts or parcels and the county, townships, cities, villages and highways therein shall constitute the special assessment district, and which district shall in said order be designated by name or number.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.154 Receipt of bids and review of apportionment of benefits; publication and mailing of notice; affidavit of mailing; failure to receive notice; contents of notice; computation of cost; adjournment; review; appearances; duty of county drain commissioner; apportionment of benefits against state trunk line highway; notices; review; finality.

Sec. 154. (1) The commissioner shall give notice as described in subsection (3) for the receiving of bids for

the construction of the drain and for the holding of a public meeting to review the apportionment of benefits. The meeting shall be not less than 5 nor more than 30 days after the date set for receiving bids.

(2) The notice under subsection (1) shall be given by publication of at least 2 insertions in a newspaper published and of general circulation in the county. The first publication shall be at least 10 days before the date set for receiving bids.

(3) The drain commissioner shall also send the notice under subsection (1) by first-class mail at least 10 days before the date of the meeting to review the apportionment of benefits, to each person whose name appears upon the last city or township tax assessment roll as owning land within the special assessment district, at the address shown on the roll. If an address does not appear on the roll, then notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the particular special assessment district. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed. If notice has been sent by first-class mail as provided in this section, the failure to receive notice by mail does not constitute a jurisdictional defect invalidating a drain proceeding or tax. If the board of determination determines that the drain is necessary for the protection of the public health and that the whole cost of the drain, except that part which may be apportioned for benefits to highways, shall be apportioned to municipalities, then mailing of individual notices to persons owning land within the special assessment district as provided in this subsection is not required.

(4) The notice under subsection (1) shall be personally served on the county clerk and 1 or more members of the road commission of a county or road district, the supervisor of a township, the mayor of a city, and the president of a village to be assessed at large.

(5) The notice under subsection (1) shall contain all of the following:

(a) The date, time, and place of receiving bids.

(b) The date, time, and place of the meeting to review the apportionment of benefits.

(c) A statement that, at the meeting to review the apportionment of benefits, the drain commissioner will have available to review the tentative apportionments against parcels and municipalities within the drainage district.

(d) A statement that drain assessments against land will be collected in the same manner as property taxes.

(e) A statement that if drain assessments against land are collected by installment, the land owner may pay the assessments in full with any interest to date at any time and thereby avoid further interest charges.

(f) The name of each county, township, city, or village to be assessed at large.

(g) A description of the land constituting the special assessment district for the drain. The description may be stated by designating the boundaries of the special assessment district by streets, highways, parcels, or tracts of land or by describing the tracts or parcels of land constituting the district. A tract or parcel need not be subdivided beyond the point where the whole of the tract or parcel is within the drainage district.

(h) The name or number of the drain.

(i) The number and length of sections, the average depth and width of each section, and if the drain will be a closed drain, the amount and specifications of all tile or pipe required.

(j) The location, number, type, and size of all culverts and bridges.

(k) The conditions upon which the contract will be awarded.

(6) The notice under subsection (1) need not contain minutes of survey or a table of cuttings. These shall be kept on file in the office of the drain commissioner.

(7) Bids shall be received and the total cost of the drain shall be computed before the time set for review of the apportionment. The computation shall be open to inspection. If the computation is not completed before the day of review, the review may be adjourned from time to time, not more than 20 days in all, for the completion of the computation, or a new hearing may be called with similar notice, by publication and service at least 10 days before the hearing. If the contracts on which the computation was based are not executed and new contracts are let at a higher price, the computation shall be corrected and a new review held with a similar notice. At the date, time, and place fixed in the notice, or at another date, time, and place to which the county drain commissioner may adjourn the hearing, the apportionment of benefits and the lands constituting the special assessment district shall be subject to review for at least 1 day. The review shall be held open from 9 a.m. until 5 p.m. At the review, the county clerk or the county road commission may appear on behalf of the county or a road district; the supervisor of a township may appear on behalf of a township; the mayor or an officer of the city designated by the mayor may appear for a city; the president may appear on behalf of a village. At the review the county drain commissioner shall hear the proofs and allegations, shall carefully reconsider and review the description of land comprised within the special assessment district, the several descriptions and apportionment of benefits, and shall define and equalize the land as is just and equitable.

(8) If an apportionment of benefits is made against a state trunk line highway, unless the director of the state transportation department consents in writing to the apportionment, the drain commissioner, at least 20 days before the review on the highway, shall notify by registered mail the director of the state transportation department of the percentage apportioned against the highway and the date, time, and place fixed for a review of apportionment of benefits. If the director of the state transportation department desires to have the apportionment of benefits reviewed by the director of the department of agriculture, the director of the state transportation department, within 10 days from the receipt of the notice, shall file with the drain commissioner an objection to the apportionment. The drain commissioner shall notify the director of the department of agriculture of the date, time, and place fixed for the review of apportionments, and at the meeting the director of the department of agriculture, or a deputy of the director, shall review the apportionment made against the state trunk line highway and listen to the proofs and allegations of the parties, and may view the highway benefited. The action and decision on the apportionment under this subsection, when reduced to writing, is final.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 61, Imd. Eff. May 20, 1957;—Am. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Eff. Sept. 6, 1963;—Am. 1965, Act 138, Eff. Mar. 31, 1966;—Am. 1978, Act 235, Imd. Eff. June 15, 1978;—Am. 2010, Act 339, Imd. Eff. Dec. 21, 2010.

Popular name: Act 40

280.155 Bids; appeal; application for board of review, bond.

Sec. 155. The owner of any land in the drainage district or any city, township, village, district or county having control of any highway which may feel aggrieved by the apportionment of benefits so made by the commissioner, may, within 10 days after the day of review of such apportionments, appeal therefrom and for such purpose make an application to the probate court of the proper county for the appointment of a board of review, by filing with said probate court a notice of appeal and at the same time filing with said court a bond in such sum as the judge of probate may require, with 1 or more sureties to be approved by the judge of probate, conditioned upon the payment of all costs in case the apportionment made by the commissioner shall be sustained. Such appeal may be taken by the county or district road commissioners in behalf of the county, the mayor of any city in behalf of the city, by the supervisor in behalf of any township, or by the president of any village in behalf of the village when authorized by the village or city council, township board or road commission, respectively. Only 1 board shall be appointed by such probate court.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.156 Bids; board of review, appointment, meeting, time, notice, duties.

Sec. 156. The probate court upon receipt of any such application as hereinbefore provided for shall forthwith notify the commissioner in writing of such appeal, and shall thereupon make an order appointing 3 disinterested and competent freeholders of such county, not residents of the township or townships affected by said drain, as members of a board of review. The persons so appointed shall constitute the board of review. The court shall thereupon, with the concurrence of the commissioner, immediately fix the time and place when and where said board of review shall meet to review said apportionments, which time shall not be less than 10 nor more than 15 days from the date of filing such appeal. The commissioner shall thereupon give notice to the persons so appointed of their appointment and of the time and place of meeting, and shall give notice of such meeting by posting notices in at least 5 public places in each township forming a part of the drainage district, and shall serve a like notice upon the appellant if he be a resident of any township affected. Such notice shall be made not less than 5 days before the day of hearing and shall be made by personal service. Proof of service of notice of appeal shall be made by the person serving said notice and be filed in the office of the judge of probate. At such hearing the board of review shall have the right, and it shall be their duty, to review all apportionments for benefits made by the commissioner on such drain. The persons so appointed shall be sworn by the commissioner to faithfully discharge the duties of such board of review.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.157 Board of review; duties generally; changes in apportionment; added lands; adjournment; notice; action and decision.

Sec. 157. The board of review shall proceed at the time, date, and place specified in the notice to hear the proofs and allegations of the parties in respect to an appeal, shall proceed to view the lands benefited by the drain and shall review the apportionments made by the commissioner on the drain. If in their judgment there is a manifest error or inequality in the apportionments they shall order and make the changes in the

apportionment as they may consider just and equitable. If the board of review upon personal examination finds that a land liable to be assessed for the construction of the drain is not included in the drainage district made by the commissioner, they shall add the land to the drainage district of the drain and shall adjourn the review to another time or place as they consider proper, but not in all more than 20 days from and after the time of review first advertised. The notice of the adjournment shall contain a description of lands added to the drainage district. The notice shall be given at least 10 days before the adjourned day of review. Should the owners of land liable to an assessment be nonresidents of the county, personal notice shall be served on the owners, or a notice shall be published in a weekly newspaper published in the county, of at least 2 insertions, giving the description of the land added to the assessment district and giving the time, date, and place where the board shall meet. The action and decision of the board shall be final. The action and decision shall be reduced to writing and signed by a majority of the board making the decision, and shall be delivered to the commissioner together with other papers relating to the decision.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1978, Act 235, Imd. Eff. June 15, 1978.

Popular name: Act 40

280.158 Appeal cost and expenses; liability on bond.

Sec. 158. In case the apportionment of the commissioner shall be sustained by such board of review the appellant shall pay the whole costs and expenses of such appeal. Such costs and expenses shall be ascertained and determined by the judge of probate, and if not paid the appellant shall be liable on his bond for the full amount of such costs in an action at law, to be brought by the commissioner on the bond before any court having competent jurisdiction.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.159 Board of review; vacancies, adjournment.

Sec. 159. Should any or all of the persons so appointed as a board of review neglect or refuse to serve or be unable to act, the commissioner shall adjourn the hearing for a sufficient length of time, not exceeding in all 10 days, to enable him to apply to the probate court, for the appointment of other persons to act on such board of review and shall make public announcement of the time and place of such adjournment. The review shall thereupon be deemed a continuous proceeding and no further notice shall be required. The probate court shall upon the showing being made, either that any or all the persons appointed as aforesaid have neglected, refused or were unable to act as the case may be and of the adjourned day of meeting, at once by order appoint such other person or persons duly qualified to fill such vacancy. And the commissioner shall notify the person or persons so appointed to fill such vacancy of his appointment and of the adjourned day of meeting. The person so appointed shall have the same power and perform the same duties as are herein provided for the board of review in the first instance.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.160 Liability for costs; only one board of review, adjournment.

Sec. 160. In case the apportionment made by the commissioner is sustained, the individual, county, township, city or village appealing shall be severally liable for all costs incurred by such appeal and the same proceedings shall be had throughout in all respects in said appeal as to the benefits and liabilities in case of an appeal from an individual apportionment: Provided, That only 1 board of review shall be appointed by such probate court for any one drain. The board of review herein provided for may adjourn any hearing before them from time to time as justice may require, not exceeding in all 20 days from the date of their first meeting.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.161 Certiorari to review drain proceedings and taxes; issues of fact, costs, postponement of proceedings.

Sec. 161. The proceedings in establishing any drain and levying taxes therefor shall be subject to review on certiorari as herein provided. A writ of certiorari for any error occurring before or in the final order of determination shall be issued within 10 days after a copy of such final order is filed in the office of the drain commissioner as required by section 151 of this act, and for any error occurring after such final order of determination, within 10 days after the day of review, or if an appeal has been taken within 10 days after the filing of the report of the board of review. Notice of such certiorari shall be served upon the commissioner

within 10 days after the day of issue in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by justices of the peace, and the writ shall be issued and served, and bond given and approved and the subject matter brought to issue in the same time and manner, as near as may be, as in such cases provided, except that such certiorari may be heard by the court during term, or at chambers, upon 5 days' notice given to the opposite party; and the circuit court of the county shall hear and determine the same without unnecessary delay, and if any material defect be found in the proceedings for establishing the drain, such proceedings shall be set aside. If issues of fact are raised by the petition for such writ and the return thereto, such issues shall, on application of either party, be framed and testimony thereon taken under the direction of the court. If the proceedings be sustained, the party bringing the certiorari shall be liable for the costs thereof, and if they be not sustained, the parties making application for the drain shall be liable for the costs. If no certiorari be brought within the time herein prescribed, the drain shall be deemed to have been legally established, and the taxes therefor legally levied, and the legality of said drain and the taxes therefor shall not thereafter be questioned in any suit at law or equity: Provided, No court shall allow any certiorari questioning the legality of any drain by any person unless notice has been given to the commissioner in accordance with the provisions of this chapter: Provided further, That when such proceedings are brought the commissioner shall postpone the letting of contracts and all other proceedings until after the determination of the court. And if any error be found in the proceedings, the court shall direct the commissioner to correct such error or errors and then proceed the same as though no error had been made.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.162 Village or city; incorporation or annexation; reapportionment of cost of drain.

Sec. 162. Whenever a village or a city is incorporated out of the territory of a township, or whenever annexations are made to a city or a village from a township, the township, city or village by action of its governing body may petition the drain commissioner in case of a county drain, or the drainage board in case of an intercounty drain, for a reapportionment of the original percent of apportionment at large against the township. Upon receipt of the petition, the drain commissioner or the drainage board, shall reapportion the percent of the original cost to the township between the township, city or village. The reapportionment shall be made in accordance with the provisions of section 152 of this act.

History: Add. 1962, Act 191, Eff. Mar. 28, 1963.

Popular name: Act 40